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Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons

Working paper submitted by Ireland on behalf of the New Agenda Coalition (Brazil, Egypt, Ireland, Mexico, New Zealand and South Africa)

Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons:

> "Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control."

Background to the working paper

1. It has been 68 years since the General Assembly of the United Nations, in its first resolution, called for the establishment of a Commission to make proposals for "the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction".[1] Twenty-four years later, the Treaty on the Non-Proliferation of Nuclear Weapons entered into force. That Treaty established a basis for pursuing the cessation of the nuclear arms race at an early date and for nuclear disarmament and established a number of prohibitions aimed at preventing the wider dissemination of nuclear weapons while reaffirming the inalienable right of all States parties to research, develop and use nuclear energy for peaceful purposes.

2. Implementation of the Treaty's objective of preventing nuclear weapons proliferation began when the Treaty entered into force. However, 44 years later, the framework prescribed by the Treaty for achieving its mutually reinforcing objectives — "cessation of the nuclear arms race at an early date and nuclear disarmament" — still remains unimplemented. As a result of this, progress on achieving the Treaty's disarmament objectives lags significantly behind the implementation of its non-proliferation objectives.

[1] See General Assembly resolution 1, entitled "Establishment of a Commission to deal with the problems raised by the discovery of atomic energy" (24 January 1946).

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3. The Treaty initially entered into force for a fixed period of 25 years, after which the question of whether it should continue in force would require a decision of all parties to the Treaty.[2] It is reasonable to assume that when the Treaty opened for signature in 1968, the outcome of a decision to be taken 27 years later as to whether the Treaty should continue in force beyond 1995 could not be predicted with any certainty. This would seem to raise a presumption that, in the absence of timelines for disarmament explicitly specified within the Treaty, it was envisaged that the Treaty would achieve its disarmament objectives either (i) within the initial 25-year lifespan or, alternatively; (ii) on the basis of timelines to be agreed and established within the set of "effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament," which article VI of the Treaty obliges all parties to the Treaty to pursue in good faith. Neither has happened.

4. At the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, the Conference of the Parties to the Treaty, "[h]aving reviewed the operation of the Treaty and affirming that there is a need for full compliance with the Treaty, its extension and its universal adherence, which are essential to international peace and security and the attainment of the ultimate goals of the complete elimination of nuclear weapons and a treaty on general and complete disarmament under strict and effective international control,"[3] agreed without a vote to extend the Treaty indefinitely so that the obligations assumed under it could continue in force. This included all obligations under the Treaty, including article VI, which remains unfulfilled.

5. The 2000 Review Conference agreed on a series of 13 practical steps for systematic and progressive efforts to implement article VI of the Treaty and paragraphs 3 and 4 (c) of the 1995 decision on "Principles and objectives for nuclear non-proliferation and disarmament". Fourteen years later, these 13 steps, which included an "unequivocal undertaking by the nuclear-weapon States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament, to which all States parties are committed under article VI",[4] remain largely unfulfilled. The "unequivocal" nature of this undertaking by the nuclear-weapon States would seem to have been undermined by subsequent claims by some nuclear-weapon States that they have reached the limits of their minimum credible nuclear deterrence requirements and therefore cannot reduce their nuclear arsenals further in current circumstances. The undertaking is further called into question by ongoing vertical proliferation and modernization programmes and by failures to de-alert operational weapons as a means of reducing nuclear tensions.

6. The 2010 Review Conference noted "the reaffirmation by the nuclear-weapon States of their unequivocal undertaking to accomplish, in accordance with the principle of irreversibility, the total elimination of their nuclear arsenals leading to

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[2] See article X (2) of the Treaty: "Twenty-five years after the entry into force of the Treaty, a conference shall be convened to decide whether the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods. This decision shall be taken by a majority of the Parties to the Treaty."

[3] See NPT/CONF.1995/32 (Part I), annex, decision 3.

[4] See 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons: Final Document, vol. I, part I, "Review of the operation of the Treaty, taking into account the decisions and the resolution adopted by the 1995 Review and Extension Conference" (NPT/CONF.2000/28 (Parts I and II)), p. 14, para. 15.

nuclear disarmament, to which all States parties are committed under article VI of the Treaty".[5] That Conference agreed on a 64-point action plan across all pillars of the Treaty, as part of which the nuclear-weapon States committed "to accelerate concrete progress on the steps leading to nuclear disarmament, contained in the Final Document of the 2000 Review Conference", including by "rapidly moving towards an overall reduction in the global stockpile of all types of nuclear weapons, as identified in action 3". This action plan called upon the nuclear-weapon States to engage promptly with a view to undertaking certain confidence-building measures and to report on progress in implementing these undertakings to the Preparatory Committee at 2014.[6] Following the failure to implement the 13 steps of 2000, the question of whether the 2010 Review Conference may be judged to have been successful will depend upon the extent to which implementation of the 2010 action plan can be demonstrated to have progressed within the current Non-Proliferation Treaty review cycle.

7. Despite significant reductions in the numbers of nuclear weapons being stockpiled since the Cold War, the global nuclear arsenal today stands in excess of 17,000 weapons, with vertical nuclear weapons proliferation and modernization programmes ongoing and intended to continue for decades to come. At the same time, a number of nuclear-weapon States have confirmed that nuclear weapons are and will remain an integral part of their national and alliance military doctrines. The obligation upon States parties to establish a framework for achieving "cessation of the nuclear arms race at an early date and nuclear disarmament" under article VI of the Non-Proliferation Treaty has not been fulfilled. The 13 practical steps for systematic and progressive efforts towards achieving this have not been implemented. As a result, the Non-Proliferation Treaty framework for nuclear disarmament lacks the mechanisms to bring about the urgency, focus and clarity necessary for the Treaty to achieve its own objective. Despite this, the nuclear-weapon States have refused to engage in or support meaningful discussions about the humanitarian impact of nuclear weapons, the follow-up process to the high-level meeting of the General Assembly on nuclear disarmament, or the Open-ended Working Group on taking forward nuclear disarmament negotiations, each of which is entirely consistent with and supportive of article VI of the Non-Proliferation Treaty and all of which offer prospects for making progress on the nuclear-weapon States' own freely given unequivocal undertakings. This calls into question the seriousness with which the nuclear-weapon States approach their unequivocal undertaking to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament. For the vast majority of States that took a sovereign decision to forego nuclear weapons, in return for which they were given assurances of complete nuclear disarmament, this state of affairs is neither acceptable nor sustainable.

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[5] See 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons: Final Document (NPT/CONF.2010/50 (Vol. I)), part I, para. 79.

[6] See 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, vol. I, part I, "Review of the operation of the Treaty, as provided for in its article VIII (3), taking into account the decisions and the resolution adopted by the 1995 Review and Extension Conference and the Final Document of the 2000 Review Conference: Conclusions and recommendations for follow-on actions (NPT/CONF.2010/50 (Vol. I), p. 21, action 5).

8. The Final Document of the 2010 Review Conference records that the Conference affirmed that "all States need to make special efforts to establish the necessary framework to achieve and maintain a world without nuclear weapons".[7] As we enter the final year of the 2015 review cycle, no such framework has been established and no exploratory or preparatory discussions have commenced so as to give effect to this commitment.

9. The purpose of this paper is to explore possible options for a framework of "effective measures" that are envisaged and required by article VI of the Treaty, and to examine how these might be elaborated in practice on terms that would strengthen article VI as an effective means for achieving the core disarmament objectives of the Treaty.

The problem: an incomplete nuclear disarmament framework as the quid pro quo for a functioning nuclear non-proliferation framework

10. Under the terms of the Treaty, the overwhelming majority of States entered into legally binding commitments not to receive, manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices in the context, inter alia, of the corresponding legally binding commitments by the nuclear-weapon States to nuclear disarmament in accordance with the Treaty. Believing "that the proliferation of nuclear weapons would seriously enhance the danger of nuclear war",[8] the parties to that Treaty desired "to further the easing of international tension and the strengthening of trust between States in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery..."[9]

The global nuclear non-proliferation framework

11. Implementation of the Treaty's non-proliferation agenda has been, for the most part, successful. In the 44 years since the Treaty's entry into force, the overwhelming majority of non-nuclear-weapon States remain faithful to their promises to forego the acquisition of nuclear weapons in exchange for promises of disarmament from the nuclear-weapon States. Global nuclear non-proliferation efforts are structurally supported and advanced by the International Atomic Energy Agency (IAEA) safeguards system and by broad participation in the decision-making bodies established by the statute of IAEA. Most countries have voluntarily adopted additional arrangements aimed at preventing nuclear weapons proliferation. If possible questions of compliance by non-nuclear-weapon States should arise, there are procedures and mechanisms by which these can be raised and examined. If serious concerns should arise, they can be referred to the IAEA Board of Governors and, in cases of particular gravity, to the United Nations Security Council. However, it is difficult to pursue non-proliferation effectively while openly failing on nuclear disarmament. The mutually reinforcing nature of nuclear disarmament and nuclear non-proliferation requires the effective implementation of both Treaty imperatives, since the success of one is dependent on and integrally linked to the achievement of

[7] Ibid., sect. II.B, para. iii.
[8] Treaty on the Non-Proliferation of Nuclear Weapons, second preambular paragraph.
[9] Ibid., eleventh preambular paragraph.

the other. Without the requisite progress on nuclear disarmament, the objectives of the Treaty will never be realized.

The global nuclear disarmament regime

12. In contradistinction to the high number of initiatives and arrangements currently in place to support the Treaty's non-proliferation agenda, the Treaty's article VI disarmament agenda has not been accorded the requisite priority. Despite a clear mandate within the statute of IAEA for the application of safeguards to any bilateral or multilateral arrangement and a role in "furthering the establishment of safeguarded worldwide disarmament", some States actively resist the application of IAEA safeguards to nuclear disarmament activities. The IAEA Board of Governors and its General Conference have not been given a role beyond those States that have eliminated all their nuclear weapons and joined the Treaty as non-nuclear-weapon States.

13. It is not acceptable that, 44 years after the entry into force of the Non-Proliferation Treaty, and 19 years after it was indefinitely extended, the parties to the Treaty have not yet elaborated the "effective measures" that article VI requires. This is despite the fact that the International Court of Justice, in its 1996 advisory opinion, concluded unanimously that there exists an obligation to pursue in good faith *and bring to a conclusion*[10] negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.[11]

14. Against this backdrop of decades of failure to elaborate and implement a viable and functioning framework for multilateral nuclear disarmament within the terms of article VI of the Treaty, the recent re-emergence of discussion and debate around the humanitarian consequences that would flow from any nuclear weapon detonation is particularly timely in that it has presented a stark picture of the potential consequences of continued collective inaction.

The humanitarian imperative for achieving and maintaining a world without nuclear weapons

15. It is a fact that the catastrophic and potentially irreversible implications of any nuclear weapon detonation are known to and understood by all States.

16. The Non-Proliferation Treaty itself was concluded in the knowledge and understanding of "the devastation that would be visited upon all humankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples..."[12] Until the commencement of the present Non-Proliferation Treaty review cycle, there has been insufficient debate about what this might mean in practice. The 2010 Review Conference Final Document clearly expressed the Conference's "deep concern at the continued risk for humanity represented by the possibility that these weapons could be used and the catastrophic humanitarian consequences that would result from the use of nuclear weapons". That this narrative has been taken up enthusiastically by a majority of United Nations Member States and a majority of Non-Proliferation Treaty States parties within the period of the current Non-Proliferation Treaty

[10] Emphasis added.

[11] Advisory opinion of 8 July 1996: Legality of the threat or use of nuclear weapons.

[12] Treaty on the Non-Proliferation of Nuclear Weapons, first preambular paragraph.

review cycle demonstrates that it is of central relevance to the issue of nuclear disarmament in the Treaty context. Humanitarian concerns were a motivating factor in establishing the Non-Proliferation Treaty; they remain a motivating factor in insisting that its provisions are implemented fully.

17. Recent fact-based discussions around the humanitarian consequences of nuclear weapons, including at two open-ended Conferences on the Humanitarian Impact of Nuclear Weapons, convened by Norway in March 2013 and by Mexico in February 2014, have enabled us to deepen our collective understanding of these calamitous consequences and of the increasing risks to life and health arising from possible (and actual) accidents, human error or systems failures at nuclear weapons facilities.[13] A key message from experts and international organizations throughout these discussions has been that no State or international body has the capacity to address the humanitarian emergency caused by a nuclear weapon detonation or to provide adequate assistance to the victims.

18. In addition to the immediate consequences for victims killed or injured by a detonation, the calamitous longer-term and trans-boundary implications — for human survival and the health of future generations; for our environment and ecosystems; for agriculture; for socioeconomic development; and for our economies — are also clearly understood.

19. The inescapable conclusion that has been drawn by the majority of United Nations Member States from this fact-based discussion is very clear:

> It is in the interest of the very survival of humanity that nuclear weapons are never used again, under any circumstances. The catastrophic effects of a nuclear weapon detonation, whether by accident, miscalculation or design, cannot be adequately addressed. All efforts must be exerted to eliminate the threat of these weapons of mass destruction.
>
> The only way to guarantee that nuclear weapons will never be used again is through their total elimination. All States share the responsibility to prevent the use of nuclear weapons, to prevent their vertical and horizontal proliferation and to achieve nuclear disarmament, including through fulfilling the objectives of the Non-Proliferation Treaty and achieving its universality.[14]

20. States parties to the Non-Proliferation Treaty elaborated, concluded, agreed and ratified that Treaty having considered "the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples".[12] With the benefit of an increased understanding of the consequences that would flow from any nuclear weapon detonation — whether by accident, miscalculation or design — and knowing that the only way to guarantee fully against even the remotest possibility of a detonation is through the total elimination of all nuclear weapons, States bear a significantly heightened responsibility to move actively — and now — to meet the disarmament objectives of article VI in full.

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[13] See: New Agenda Coalition working paper submitted to the Third Preparatory Committee of the 2015 Review Conference, entitled "Humanitarian impact of nuclear weapons: known risks and consequences".

[14] See statement delivered by New Zealand on behalf of 125 States, sixty-eighth United Nations General Assembly First Committee meeting, New York, 21 October 2013.

21. Failure to establish a structured framework — involving nuclear weapon States and non-nuclear-weapon States alike — to pursue multilateral nuclear disarmament, as required by the Non-Proliferation Treaty, has meant that the process of disarmament has taken on the appearance of a voluntary endeavour to be undertaken by the nuclear-weapon States at a pace, in a manner, and on terms to be decided exclusively by them. However, as the Treaty's obligation to pursue effective measures for the collective achievement of nuclear disarmament makes clear, as the 1996 advisory opinion of the International Court of Justice confirms, and as the nuclear-weapon-States' own unequivocal undertakings "to accomplish the total elimination of their nuclear arsenals" would seem to acknowledge, nuclear disarmament, however onerous and expensive, is not a voluntary endeavour. It is a Treaty obligation.

22. As we advance towards the 2015 Review Conference, the New Agenda Coalition, through the present working paper, calls for serious and sustained discussion around the Non-Proliferation Treaty requirement that all parties to the Treaty must pursue and elaborate "effective measures" for the achievement of the Treaty's irreducible disarmament imperatives. This discussion will hopefully give added focus to any outcome of the 2015 Review Conference and assist in orientating the wider nuclear disarmament discussion beyond 2015.

The need for a clear, legally-binding, multilateral commitment to achieve nuclear disarmament

23. In the Open-ended Working Group on taking forward multilateral nuclear disarmament negotiations, the New Agenda Coalition asserted that the key to maintaining the integrity and sustainability of the global nuclear disarmament and non-proliferation regime is through the elaboration of "a clear, legally binding, multilateral commitment to achieve nuclear disarmament, which would underpin and guide all future efforts towards nuclear disarmament".[15] In terms of what this might entail, the New Agenda Coalition suggested that, "What is needed is a comprehensive and legally binding framework committing all States to a world free of nuclear weapons, which the New Agenda Coalition has consistently advocated for ... implemented in an unconditional manner and backed by clearly defined timelines and benchmarks".[16]

24. Any such clear, freely entered into, legally binding, multilateral commitment, however elaborated, would be entirely consistent with the demand in article VI of the Non-Proliferation Treaty for "effective measures" to end the nuclear arms race and achieve nuclear disarmament. The pursuit of such a commitment would be equally consistent with action 1 of the 64-point action plan agreed on at the 2010 Review Conference, which requires that:

> "All States parties commit to pursue policies that are fully compatible with the Treaty and the objective of achieving a world without nuclear weapons."

25. To achieve and maintain a world free of nuclear weapons, the New Agenda Coalition has suggested that among the measures that will need to be established as part of this legally binding commitment are: a prohibition against the use or threat

[15] See New Agenda Coalition working paper to the Open-ended Working Group, entitled "Elements for the achievement and maintenance of a world without nuclear weapons" (A/AC.281/WP.10), para. 14.

[16] Ibid.

of use of nuclear weapons; a prohibition against the possession, stockpiling, development or transfer of nuclear weapons; a prohibition against the production of or the use of already existing fissile material for nuclear weapons and the placing of all such fissile material under international safeguards; and a prohibition against nuclear-weapons tests in all their forms, including both supercritical and subcritical tests. To these would be added an obligation to achieve the complete elimination of nuclear weapons.[17]

Elements essential to any instrument creating a set of effective measures relating to cessation of the arms race at an early date and to nuclear disarmament

26. Enlarging upon this to set out a core list of elements that will form an essential part of any instrument or arrangement of instruments creating the set of "effective measures relating to cessation of the arms race at an early date and to nuclear disarmament" that article VI of the Non-Proliferation Treaty obliges States to elaborate, the following is suggested:

(i) A series of legal prohibitions against the development, testing, production, stockpiling, transfer, use and threat of use of nuclear weapons;

(ii) An unequivocal and legally binding obligation to enter into a transparent, irreversible and verifiable process of complete nuclear disarmament;

(iii) Provisions for the control of fissile and other nuclear materials relevant to nuclear explosive devices such that these will not be used for weapons or other nuclear explosive purposes;

(iv) An effective means of verifying the implementation of the obligations and prohibitions arising under the instrument or framework, including through declarations, inspections, monitoring, cooperation, fact-finding, compliance and dispute-settlement mechanisms, etc.;

(v) A framework of national implementation measures;

(vi) An effective and non-discriminatory means of protecting States' entitlement to the exclusively peaceful uses of nuclear technology, subject, in all cases, to safeguards.

Early consideration should be given to:

(vii) The practical, technical, legal, financial, administrative and other arrangements required for the creation of a treaty body to oversee all related activities and objectives, including through the creation of policy- and decision-making organs of the treaty body, the membership of which would be composed of State representatives.

27. The present working paper is designed to bring into the Non-Proliferation Treaty review cycle a serious discussion on the essential constituent elements that will be required if the instrument is to achieve its objective. To test how these elements might function in practice, States could explore a number of options for "effective measures" to implement article VI that have been suggested in the public discourse on nuclear disarmament.

[17] Ibid., para. 11.

28. The commencement of discussions around the options for effective measures to implement article VI of the Non-Proliferation Treaty does not in any way obviate or alter the need for urgent action on other existing obligations, commitments and undertakings entered into freely under the Treaty and at successive Treaty Review Conferences. In this regard, efforts must be intensified towards the establishment of nuclear-weapon-free zones where they do not yet exist and, in particular, in the Middle East in fulfilment of the 1995 resolution on the Middle East, agreed as part of a package of agreements that included the indefinite extension of the Treaty and reaffirmed by the 2000 and 2010 Review Conferences.

Options that have been suggested for the achievement and maintenance of a world free of nuclear weapons

29. Various options for achieving and maintaining a world free of nuclear weapons suggest themselves or have been suggested in the public discourse on nuclear disarmament. These options should now be explored, discussed and tested against the requirements of article VI. They are described in more detail in the annexes to this paper. They may be summarized as follows:

(1) A comprehensive **Nuclear Weapons Convention**, which, in setting out general obligations, prohibitions and an effective basis for time-bound, irreversible and verifiable nuclear disarmament, would complement the Chemical Weapons Convention and the Biological and Toxin Weapons Convention as an effective measure for the elimination of all weapons of mass destruction;

(2) A **Nuclear Weapons Ban Treaty**, which would establish the key prohibitions necessary for the pursuit, achievement and maintenance of a world free of nuclear weapons; such a Treaty could, but need not, additionally set out the practical arrangements required for implementing and overseeing effective, time-bound, irreversible and verifiable nuclear disarmament;

(3) A **framework arrangement** of mutually supporting instruments aimed at achieving and maintaining a world free of nuclear weapons. These would work in concert to establish the key prohibitions, obligations and arrangements for the achievement and maintenance of a world free of nuclear weapons;

(4) A **hybrid arrangement** which might include elements of all or any of the above options, or new elements.

30. The New Agenda Coalition does not assert that the above list of options is exhaustive; other options may suggest themselves or be suggested. Nor are any options presented as being necessarily mutually exclusive to, or in competition with, each other. In order to realize the Non-Proliferation Treaty's shared goal of a world without nuclear weapons, it is in the interests of all States to participate in discussions around each of the options described above from the outset and to strive for the universality of any effective measures that might emerge from these discussions, pursuant to article VI of the Treaty. The New Agenda Coalition calls for all options to be discussed, examined and tested in full against the requirements of article VI, with a view to the early agreement of a framework to be implemented. The New Agenda Coalition asserts again that this is a treaty obligation upon all States parties to the Non-Proliferation Treaty. Each article of the Treaty is binding

on the States parties at all times and in all circumstances; all States parties should be held fully accountable with respect to strict compliance with their obligations under the Treaty.

31. Any of the options suggested would advance the object and purpose of the Non-Proliferation Treaty in the manner envisaged and required by article VI of the Treaty, through the pursuit and conclusion of negotiations on "effective measures" to complement and complete the Treaty's disarmament framework.

The need for full implementation of article VI as a constituent element of the Non-Proliferation Treaty

32. Serious discussion is required on all aspects of the requirement of article VI of a framework for nuclear disarmament. All available forums should be used, including, but not limited to, the standing institutions in which disarmament issues should be addressed and more recent initiatives such as the follow-up process to the 2013 high-level meeting of the General Assembly on nuclear disarmament, the Open-ended Working Group on taking forward multilateral nuclear disarmament negotiations reconstituted under a new mandate and at stand-alone conferences that address disarmament issues. The New Agenda Coalition will continue to call for discussions in all of these forums.

33. Unless and until all options for the elaboration of the "effective measures" envisaged by article VI are explored, the present stalled pace of disarmament will continue. This will place increasing and intolerable pressure on a treaty that has already been accused of being discriminatory in that its Conference of States Parties has consistently pressed the Treaty's non-proliferation agenda with vigour and urgency while persistently failing to establish a functioning framework for complete nuclear disarmament as agreed. The perception of discrimination has not been helped by defence doctrines that appear to suggest that nuclear-weapon States, nuclear alliance States and nuclear umbrella States are entitled to retain and/or rely upon what is described as a "credible" or "minimum" deterrent nuclear weapons capability as a necessary means of ensuring their security, potentially in perpetuity, or by claims that international security conditions are not at present conducive to a world without nuclear weapons. The situation is exacerbated by ongoing nuclear weapons modernization programmes (amounting to a de facto qualitative nuclear arms race) and by the continued forward deployment of nuclear weapons on the territory of non-nuclear-weapon States.

34. The New Agenda Coalition sees a direct causal link between the retention of nuclear weapons and possible attempts to acquire them. The dynamic of an arms race has always been that possession provides the incentive for acquisition; proliferation begets proliferation.

35. Given that more than four decades have passed since the entry into force of the Non-Proliferation Treaty, and almost seven decades have passed since the first General Assembly resolution called for proposals for "the elimination from national armaments of atomic weapons and all other major weapons adaptable to mass destruction", the status quo is unacceptable. The New Agenda Coalition believes it is long past time for States to deliver upon their repeated expressions of political commitment to the elimination of nuclear weapons in line with Non-Proliferation Treaty obligations, to be reflected in substantial action to safeguard future generations from the danger of a nuclear disaster arising from the use of nuclear weapons.

Annex I

Option 1: A comprehensive Nuclear Weapons Convention

1. A model Nuclear Weapons Convention was submitted as an official document to the sixty-second session of the General Assembly of the United Nations.[a] This detailed document sets out the legal, technical and political elements which it suggests are required for the establishment and maintenance of a nuclear weapons-free world. It includes among its main elements:

(1) A set of **general obligations** prohibiting the development, testing, production, stockpiling, transfer, use and threat of use of nuclear weapons and requiring States possessing nuclear weapons to destroy them;

(2) A **declarations** obligation, under which States parties to the Convention would be required to declare all nuclear weapons, nuclear material, nuclear facilities and nuclear weapons delivery vehicles that they possess or control and the locations of these;

(3) A phased process of nuclear weapons **elimination**, involving five phases of elimination: (i) de-alerting; (ii) removal from deployment; (iii) removal of warheads from their delivery vehicles; (iv) disabling of the warheads; and (v) removal and disfiguring of the "pits" and placement of fissile material under international control;

(4) A **verification** process, which would include declarations and reports from States, routine inspections, challenge inspections, on-site sensors, satellite photography, radionuclide sampling and other remote sensors, information-sharing with other organizations, and citizen reporting;

(5) A set of **national implementation measures**, through which States parties would be required to adopt necessary legislative measures to implement their obligations under the Convention to provide for the prosecution of persons committing crimes and for the protection for persons reporting violations of the Convention; States would also be required to establish a national authority responsible for national tasks in implementation;

(6) A series of **rights and obligations** for individuals, legal entities and States;

(7) The establishment of an **Agency** to implement the Convention. This would be responsible for verification, ensuring compliance, and decision-making, and would comprise a conference of States parties, an executive council and a technical secretariat;

(8) Provisions regarding **nuclear material**, which would prohibit the production of any fissionable or fusionable material that can be used directly to make a nuclear weapon, including plutonium (other than that

[a] See annex to the letter dated 17 December 2007 from the Permanent Representatives of Costa Rica and Malaysia to the United Nations addressed to the Secretary-General (A/62/650, dated 18 January 2008).

in spent fuel) and highly enriched uranium. Low enriched uranium would be permitted for nuclear energy purposes;

(9) Procedures for **cooperation, compliance and dispute settlement**, which include provisions for consultation, cooperation and fact-finding to clarify and resolve questions of interpretation with respect to compliance and other matters, with the possibility of referrals to the International Court of Justice and a series of graduated responses for non-compliance;

(10) A means of clarifying **how the Convention would relate to other international agreements**. The model Nuclear Weapons Convention would represent the implementation of article VI, of a universally adhered to Non-Proliferation Treaty, and build on existing nuclear non-proliferation and disarmament regimes and verification and compliance arrangements, including the Non-Proliferation Treaty, International Atomic Energy Agency Safeguards, Comprehensive Test Ban Treaty Organization International Monitoring System and bilateral agreements between the Russian Federation and the United States of America. In some cases, the model Nuclear Weapons Convention may add to the functions and activities of such regimes and arrangements. In other cases, the model Nuclear Weapons Convention would establish additional complementary arrangements;

(11) Details as to **financing**, under which nuclear-weapon States would meet the costs of eliminating their nuclear arsenals and an international fund would be established to assist States facing financial difficulties in meeting their obligations;

(12) The inclusion of an **optional protocol concerning energy assistance**, which would establish a programme of energy assistance for States parties choosing not to develop nuclear energy or to phase out existing nuclear energy programmes.

2. As set out above, a comprehensive Nuclear Weapons Convention would complement the Chemical Weapons Convention and the Biological and Toxin Weapons Convention and, thereby, complete the international treaty framework for the elimination and prohibition of all weapons of mass destruction. The draft submitted to the sixty-second session of the General Assembly could offer a useful basis for States to begin discussions exploring the concept of a comprehensive Convention and how it would work in practice.

3. Consideration would have to be given to how a comprehensive Convention would operate in practice alongside — in support of — the Non-Proliferation Treaty, particularly if both arrangements enjoy different levels of adherence. Article VI of the Non-Proliferation Treaty does not require that any new "effective measure" be situated within the text of the Non-Proliferation Treaty, but simply that measures must be elaborated in support of the Treaty's object and purpose. Consistent with general international law, it would, of course, be possible for non-Non-Proliferation Treaty States to adhere to a Convention (either as a stand-alone instrument or as part of a wider framework arrangement) without first being required to adhere to the Non-Proliferation Treaty. The effect would be to facilitate the implementation of Non-Proliferation Treaty norms and obligations on terms that permit non-Non-Proliferation Treaty State participation. Non-Proliferation Treaty universality

could of course follow and as now would be encouraged. At the same time, it is possible that certain Non-Proliferation Treaty States may be disinclined to join a Convention, at least initially. States should explore what this might mean for the Non-Proliferation Treaty, for a comprehensive Convention, and for the respective groups of States adhering to (or choosing not to adhere to) each.

4. Examination of a comprehensive Nuclear Weapons Convention should explore fully all practical issues that may arise in the implementation of the Convention's provisions in order to support article VI of the Non-Proliferation Treaty.

Annex II

Option 2: A Nuclear Weapons Ban Treaty

1. While many States have recognized the need to eliminate and abolish nuclear weapons internationally, this has not manifested itself in any exploratory or preparatory work or discussion by States around the concept of a Ban Treaty as a contributor to disarmament and non-proliferation efforts. As a possible means of ensuring the full implementation of article VI, the Ban Treaty option should be examined by States as with all other options.

2. At its simplest, a Nuclear Weapons Ban Treaty could be established through a short legally binding instrument that codifies in relatively simple terms the detail of the prohibitions implicitly assumed by all of the non-nuclear-weapon States when they joined the Non-Proliferation Treaty. To achieve this, the Treaty could simply set out a short sequence of general obligations and prohibitions similar to those set out in the general obligations section of the draft model Nuclear Weapons Convention submitted to the General Assembly at its sixty-second session. Through such provisions, a Ban Treaty could establish existing Non-Proliferation Treaty obligations and commitments on a more clearly defined footing and continue them in effect.

3. As distinct from a comprehensive Convention, it would not seem necessary for a Ban Treaty to prescribe the kinds of legal and technical arrangements needed for the establishment and maintenance of a nuclear weapons-free world. It could of course prescribe such arrangements to the extent that States might wish. However, if not prescribed in a Ban Treaty, such arrangements would need to be prescribed by other means. In this sense, it would appear that a short-form Ban Treaty, which simply prohibits the weapons, might usefully be examined as either an instrument building upon existing obligations in a longer-term process towards elaborating a complete set of effective measures for the achievement and maintenance of a world without nuclear weapons or, alternatively, as just one constituent element of a wider framework arrangement to achieve the same ends (see Option 3 — "framework arrangement" — annex III).

4. As in the case of the comprehensive Nuclear Weapons Convention, consideration would have to be given to how a Ban Treaty would operate in practice alongside — in support of — the Non-Proliferation Treaty, particularly if both arrangements enjoyed different levels of adherence. Article VI of the Non-Proliferation Treaty does not require that any new "effective measure" be situated within the text of the Treaty, but simply that measures be elaborated in support of the Treaty's object and purpose. It would therefore be possible for non-Non-Proliferation Treaty States to adhere to a Ban Treaty (either as a stand-alone instrument or as part of a wider framework arrangement) without first having to adhere to the Non-Proliferation Treaty. The effect would be to facilitate the implementation of Non-Proliferation Treaty norms and obligations on terms that permit non-Non-Proliferation Treaty State participation. Non-Proliferation Treaty universality could of course follow and as now would be encouraged. At the same time, it is possible that certain Non-Proliferation Treaty States may be disinclined to join a Ban Treaty, at least initially. States should explore what this might mean for the Non-Proliferation Treaty, for the Ban Treaty, and for the respective groups of States adhering to (or choosing not to adhere to) each.

5. A Ban Treaty, in whatever form it might take, would need to make some provision for the elaboration (either within the Ban itself or by other means) of the disarmament obligations and arrangements that would be a necessary and irreducible element of the accession of any nuclear-weapon-possessor State. These disarmament arrangements would need to include a basis for verification procedures, timelines, reporting arrangements, etc., similar to those in a comprehensive Convention. A short-form Ban Treaty that does not delineate detailed verification arrangements for disarmament could equally make provision for the subsequent elaboration of these details at a later date, by agreement between the acceding weapons State and the policymaking organs of the Ban Treaty organization.

6. As set out above, the prohibitions set out in a Nuclear Weapons Ban Treaty would complement the prohibitions set out in the Chemical Weapons Convention and the Biological and Toxin Weapons Convention and, thereby, complete the international treaty framework for the prohibition of all weapons of mass destruction.

7. Examination of the Ban Treaty should explore fully all practical issues that may arise in the implementation of the Ban Treaty's provisions in order to support article VI of the Non-Proliferation Treaty.

Annex III

Option 3: A framework arrangement

1. A framework arrangement would involve the elaboration of a series of mutually supporting instruments that, together, would address the various requirements of achieving and maintaining a world without nuclear weapons. At the centre of the framework would be the Non-Proliferation Treaty. It would be supported from without by a number of instruments that would presumably include: the Comprehensive Nuclear-Test-Ban Treaty, if and when it enters into force, and a Fissile Material Treaty, if one is negotiated and agreed.

2. Further requirements of a framework arrangement would seem to include an instrument setting out the detail of general obligations and prohibitions to be assumed (which could be achieved through either a comprehensive Nuclear Weapons Convention or a Nuclear Weapons Ban Treaty — both described in annexes I and II above); and an instrument establishing the necessary technical, legal and other arrangements for the implementation and oversight of related nuclear disarmament activities and nuclear non-proliferation safeguards within the arrangement. A comprehensive Convention, as described in paragraph 29 of the working paper, may provide many of these requirements of a framework. This would not preclude the addition of a Ban Treaty or any other instrument that States might suggest.

3. Examination of a framework arrangement should explore fully all practical issues that may arise in the implementation of the provisions of each instrument in order to support article VI of the Non-Proliferation Treaty.

Annex IV

Option 4: A hybrid arrangement

1. A hybrid arrangement would take individual elements of the three arrangements mentioned in annexes I to III above and combine them or add to them, in elaborating an instrument or set of instruments to set out the necessary "effective measures" to achieve and maintain a world without nuclear weapons.